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OFFICIAL OPINION

David R. Williams, Executive Director
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Suite 100
1875 Century Boulevard
Atlanta, Georgia 30345

RE: The additional penalty imposed by O.C.G.A. § 15-21-179 applies, unless there is a specific exception, where a court imposes a fine for a violation of any traffic law and is not limited to violations of those laws that are set forth in Chapter 6 of Title 40 of the Official Code of Georgia.

Dear Mr. Williams:

You have asked whether the additional penalty imposed by O.C.G.A. § 15-21-179 applies only where a court imposes a fine for a violation of those laws set forth in Chapter 6 of Title 40 or whether the additional penalty also applies where a court imposes a fine for a violation of other traffic laws.

During its 2005 session, the General Assembly passed Senate Bill 226. As relevant to your request, Senate Bill 226 enacted O.C.G.A. § 15-21-179 which provides as follows:

- (a) In every case in which any court in this state shall impose a fine or bond payment, which shall be construed to include costs, for any violation of the traffic laws of this state or for violations of ordinances of political subdivisions which have adopted by reference the traffic laws of this state, *there shall be imposed as an additional penalty a sum equal to 5 percent of the original fine.*
- (b) Such sums shall be in addition to any amount required to be paid into any pension, annuity, or retirement fund under Title 47 or any other law and in addition to any other amounts provided for in this article.

- (c) This Code section shall be repealed in its entirety on June 30, 2008, unless extended by an Act of the General Assembly.

(Emphasis added).¹ Senate Bill 226 also enacted O.C.G.A. § 15-21-180, which provides:

- (a) The sums provided for in Code Section 15-21-179 shall be assessed and collected by the clerk or other court officer charged with the duty of collecting moneys from fines and shall be paid over by the last day of the following month to the Georgia Superior Court Clerks' Cooperative Authority for remittance to the Office of Treasury and Fiscal Services to be deposited into the general fund of the state treasury.
- (b) Any person whose duty it is to collect and remit the sums provided for in this article who refuses to so remit shall be guilty of a misdemeanor.

Your request focuses on Chapter 6 of Title 40, the "Uniform Rules of the Road," which was enacted in part "to revise, classify, consolidate, and modernize present laws relating to the rules of the road for traffic and to establish new laws relating thereto . . ." *Head v. State*, 246 Ga. 360, 362 (1980) (quoting 1974 Ga. Laws 633). In particular, you want to know whether the use of the term "traffic laws" in O.C.G.A. § 15-21-179 is intended to limit its application to the laws contained in Chapter 6 of Title 40 or whether it has a broader meaning.

There are a number of authorities that provide guidance regarding the meaning of the phrase "traffic laws" in O.C.G.A. § 15-21-179. In the context of traffic stops by law enforcement, the Georgia Court of Appeals has not construed "traffic laws" to be only those set forth in Chapter 6 of Title 40.

In *Tukes v. State*, 236 Ga. App. 77 (1999), the Georgia Court of Appeals upheld the validity of a search conducted incident to a traffic stop based on an officer's observation that the driver failed to wear a safety belt, had an obscured county license plate decal, and

¹ The additional penalty imposed by O.C.G.A. § 15-21-179 is triggered by the imposition of a fine or bond payment. This is quite similar to the manner in which the additional penalties mandated by O.C.G.A. § 15-21-73(a) are imposed. 2005 Op. Att'y Gen. U05-4 concludes that because no fine is imposed in cases involving the civil monetary penalty under O.C.G.A. § 40-6-20(f)(3)(A), no additional penalties pursuant to O.C.G.A. § 15-21-73(a) are authorized to be imposed in those cases. In the same manner, where a civil monetary penalty is imposed under O.C.G.A. § 40-6-20(f)(3)(A), the additional penalty pursuant to O.C.G.A. § 15-21-179 would not apply. There are other civil penalties in Title 40. See, e.g., O.C.G.A. §§ 40-5-159 and 40-6-427.

made an improper lane change. In doing so, the Court indicated that “*any one of the traffic violations* observed by the officer would have provided probable cause to effectuate a stop of Tukes’ car.” *Id.* at 77 (emphasis added). As noted by the Court in *Tukes*, the violation for failure to wear a safety belt is set forth in O.C.G.A. § 40-8-76.1 and the violation for an obscured county decal is set forth in O.C.G.A. § 40-2-31(e). 236 Ga. App. at 77 n.1.²

In *Smith v. State*, 240 Ga. App. 150 (1999), the Georgia Court of Appeals concluded that a traffic stop was not illegal where the person stopped had been observed to have been driving with an expired tag. In doing so, the Court stated as follows:

... if the driver of a stopped car has broken even a relatively minor *traffic law*, a motion to suppress arguing that the stop was pretextual must fail. In this case, Owens was *driving with an expired tag*. Therefore, the officer’s stop was not illegal.

Id. at 151 (emphasis added).³ In *Clark v. State*, 243 Ga. App. 362 (2000), the Court of Appeals, relying on the *Smith* decision, indicated that operating a vehicle with an expired automobile dealer drive-out tag was a traffic violation justifying a traffic stop.⁴ *Id.* at 365.

In reviewing the jurisdiction of a municipal court and that of sheriffs, prior opinions of the Attorney General have not limited or narrowly construed the phrase “traffic laws.” A 1973 opinion concludes that a municipal court with jurisdiction over violations of “traffic laws” has jurisdiction over offenses relating to laws requiring annual motor vehicle inspections. 1973 Op. Att’y Gen. 73-29.⁵ A 1969 opinion addressing the powers of sheriffs to enforce traffic laws includes statutes concerning licensing and size and weight requirements for motor vehicles within the scope of traffic laws. 1969 Op. Att’y Gen. U69-385.⁶

² It should be noted that O.C.G.A. § 40-8-76.1(e)(2) expressly provides that the fine for failing to wear a seat safety belt is not more than \$15.00 and is not subject to “any additional penalty, fee, or surcharge.”

³ The offense of operating a motor vehicle with an expired license plate is set forth at O.C.G.A. § 40-2-8. Other cases have also indicated that operating a vehicle with an expired license plate is a violation of a traffic law justifying a traffic stop. *Lenhardt v. State*, 271 Ga. App. 453, 454 (2005); *Maxwell v. State*, 249 Ga. App. 747, 748 (2001).

⁴ Operating a motor vehicle with an expired dealer drive-out plate is a violation of O.C.G.A. § 40-2-8.

⁵ Georgia no longer has the motor vehicle mechanical inspections that were in place at the time of 1973 Op. Att’y Gen. 73-29. See 1982 Ga. Laws 165.

⁶ Two unofficial opinions addressing the jurisdiction of courts of ordinary reach a different result. A 1958 unofficial opinion concludes that the offense of operating a motor vehicle with an expired license tag is not an offense involving the traffic laws of the state and, therefore, not within the jurisdiction of the courts of ordinary. 1958-59 Op. Att’y Gen. 67. A 1965 unofficial opinion, also dealing with courts of ordinary, concludes that offenses involving improper tag registration, improper tags, and lack of tags are not

In 1997 Op. Att’y Gen. U97-28 this office concluded that the additional penalty added to fines imposed for criminal offenses by O.C.G.A. § 13-12-131 applies to traffic offenses. That opinion makes specific reference to the fact that violations of Chapter 6 of Title 40 are chargeable as misdemeanors, but does not limit its conclusion only to those traffic laws that are set forth in Chapter 6 of Title 40.⁷

O.C.G.A. § 40-13-33 sets forth a 180-day period of limitation for “[a]ny challenge to a misdemeanor conviction of any of the traffic laws of this state, or the traffic laws of any county or municipal government” In part because there is no limiting language in the quoted phrase, Georgia courts have broadly construed this period of limitation as applying to “all challenges to final convictions’ of misdemeanor traffic offenses.” *Brown v. Earp*, 261 Ga. 522, 524 (1991). Similarly, O.C.G.A. § 15-21-179(a) does not include any limiting language in the phrase “for any violation of the traffic laws of this state” Clearly, where the General Assembly has determined to do so, it has included limiting language related to traffic violations. For example, O.C.G.A. § 40-5-57 provides for a point system pursuant to which driver’s licenses are subject to suspension. The point system applies “for convictions of violations of the provisions of Chapter 6 of . . . [T]itle [40], of violations of lawful ordinances adopted by local authorities regulating the operation of motor vehicles, and of offenses committed in other states which if committed in this state would be grounds for such assessment.” O.C.G.A. § 40-5-57(b). The point system does not apply “for violating a provision of state law or municipal ordinance regulating standing, parking, equipment, size, and weight.” O.C.G.A. § 40-5-57(b).⁸

The phrase “traffic laws” has not been interpreted as being limited to those laws set forth in Chapter 6 of Title 40, and the express language of O.C.G.A. § 15-21-179 does not provide any limitation. Therefore, based on the foregoing, it is my official opinion that

violations of “traffic laws.” 1965 Op. Att’y Gen. U65-18. The conclusions of these opinions are no longer valid in light of the authorities cited herein.

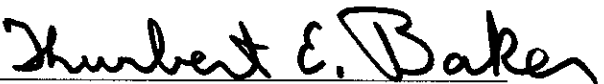
⁷ Criminal violations are provided for in numerous places in Title 40 other than Chapter 6. For example, O.C.G.A. § 40-2-8(c) provides that it is a misdemeanor to operate a motor vehicle without a valid county decal unless the decal is not required. O.C.G.A. § 40-8-7(a) provides that it is a misdemeanor to operate an unsafe motor vehicle on the highways of the state. O.C.G.A. § 40-8-79 makes it a misdemeanor for the driver of a vehicle to permit a person under the age of 18 years to ride as a passenger in the uncovered bed of a truck.

⁸ The point system has been described as applying to “*moving violations of traffic regulations governing motor vehicles.*” *Bowman v. Parrott*, 200 Ga. App. 405, 405 (1991) (emphasis added). The Court of Appeals has referred to a violation of Chapter 2 of Title 40 as a “non-moving traffic offense.” *Freeman v. State*, 194 Ga. App. 303, 303 (1990). This distinction may explain the separate grant of jurisdiction to municipal courts in O.C.G.A. § 40-13-22 for offenses under O.C.G.A. § 40-2-8. This grant of jurisdiction is in addition to that granted by O.C.G.A. § 40-13-21 to municipal courts regarding “all criminal laws of this state relating to traffic upon the public roads, streets, and highways of this state where the penalty for the offense does not exceed that of the grade of misdemeanor.”

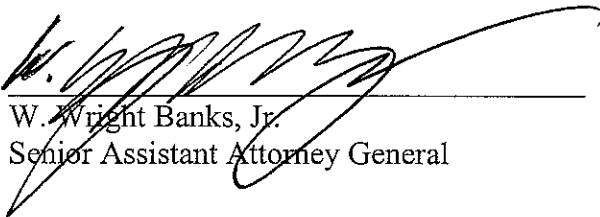
the additional penalty imposed by O.C.G.A. § 15-21-179 applies, unless there is a specific exception, where a court imposes a fine for a violation of any traffic law and is not limited to violations of those laws that are set forth in Chapter 6 of Title 40 of the Official Code of Georgia.⁹

Issued this 27th day of September, 2005.

Sincerely,


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⁹ As previously noted, there is a specific exception from “any additional penalty, fee, or surcharge” in O.C.G.A. § 40-8-76.1(e)(2). *See supra* note 2. There are other specific exceptions. *See, e.g.*, O.C.G.A. § 40-8-76(b)(2).